

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:13-16706 Hector Cahuantzi Gutierrez**

**Chapter 13**

**#1.00 Motion for relief from stay [RP]**

US BANK N.A.  
VS  
DEBTOR

fr. 11/14/18

Docket 80

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hector Cahuantzi Gutierrez

Represented By  
Rabin J Pournazarian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10295 Adolph Earl Jones and Katherine Johnson Jones**

**Chapter 13**

**#2.00 Motion for relief from stay [RP]**

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 11/7/18

Docket 58

**Tentative Ruling:**

**Tentative Ruling from 11/7/2018**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Adolph Earl Jones

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room      301**

9:30 AM

**CONT...      Adolph Earl Jones and Katherine Johnson Jones**  
Allan S Williams

**Chapter 13**

**Joint Debtor(s):**

Katherine Johnson Jones

Represented By  
Allan S Williams

**Movant(s):**

JPMORGAN CHASE BANK,

Represented By  
Raymond Jereza

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13626 Dwayne Rice Corbitt**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 9/12/18; 10/3/18; 10/17/18; 11/14/18

**Stip for adequate protection fld 12/10/18**

Docket 103

**\*\*\* VACATED \*\*\* REASON: APO entered 12/11/18.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dwayne Rice Corbitt

Represented By  
Ellen M. Cheney  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12249 Jason Clay Holt**

**Chapter 7**

**#4.00** Motion for relief from stay [PP]

HONDA LEASE TRUST  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jason Clay Holt

Pro Se

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jason Clay Holt**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10880 LaFaye Francisco**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 44

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

LaFaye Francisco

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12835 Carol Yesenia Carrillo**

**Chapter 13**

**#5.10 Motion for relief from stay [RP]**

JAMES WYATT, TRUSTEE OF THE J&D CONSULTING/MANAGEMENT PLAN  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carol Yesenia Carrillo

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Carol Yesenia Carrillo**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:14-14009 Michele Amy Schneider**

**Chapter 13**

**#5.20 Motion for relief from stay [RP]**

WILMINGTON SAVINGS FUND SOCIETY FSB  
VS  
DEBTOR

fr. 11/7/18; 12/5/18

Docket 55

**Tentative Ruling:**

**Tentative Ruling from 11/7/2018**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Michele Amy Schneider**

**Chapter 13**

**Debtor(s):**

Michele Amy Schneider

Represented By  
Joshua L Sternberg

**Movant(s):**

Wilmington Savings Fund Society,

Represented By  
Raymond Jereza

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12375 Stefanie Vianey Barajas Espinoza**

**Chapter 7**

**#5.30** Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION  
VS  
DEBTOR

fr. 12/5/18

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stefanie Vianey Barajas Espinoza

Represented By  
Sydell B Connor

**Movant(s):**

NISSAN MOTOR ACCEPTANCE

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Stefanie Vianey Barajas Espinoza**

**Chapter 7**

Michael D Vanlochem

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12566 Wayne Holloway**

**Chapter 7**

**#5.40** Amended motion for relief from stay [UD]

PUNAM GOHEL  
VS  
DEBTOR

fr. 12/5/18

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wayne Holloway

Pro Se

**Movant(s):**

Punam Gohel

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Wayne Holloway**

Helen G Long

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:15-14067 Brian Igbini**

**Chapter 13**

**#5.50** Motion for relief from stay [RP]

U.S. BANK, NA  
VS  
DEBTOR

fr. 12/5/18

**Stip for adequate protection filed 12/7/18**

Docket 60

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
12/10/18.**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brian Igbini

Represented By

Anthony Obehi Egbase  
Crystle Jane Lindsey  
Edith Walters  
W. Sloan Youkstetter

**Movant(s):**

U.S. Bank, N.A., successor trustee to

Represented By

Daniel K Fujimoto  
Caren J Castle

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11857 Robert Winn, Jr**

**Chapter 13**

**#5.60 Motion for relief from stay [RP]**

U.S. BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 12/5/18

Docket 25

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Winn Jr

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Robert Winn, Jr**

**Chapter 13**

Julie J Villalobos

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10369 Jaime Gutierrez**

**Chapter 13**

**#5.70 Motion for relief from stay [RP]**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 12/5/18

**Stip for adequate protection fld 12/11/18**

Docket 45

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jaime Gutierrez

Represented By  
Raj T Wadhwani

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11849 Leticia E. Donis Duran**

**Chapter 13**

**#5.80** Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING LLC  
VS  
DEBTOR

fr. 12/5/18

Docket 19

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leticia E. Donis Duran

Represented By  
Donald E Iwuchuku

**Movant(s):**

Lakeview Loan Servicing, LLC

Represented By  
Darlene C Vigil

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:18-01077      The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

**#6.00**      Status conference re: complaint for interpleader

fr. 9/5/18

Docket      1

**\*\*\* VACATED \*\*\* REASON: Status conference continued to 2/20/19 at  
1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Pro Se

**Plaintiff(s):**

The Lincoln National Life Insurance

Represented By  
Erin Illman

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room      301**

1:30 PM

**1:17-10825    Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061      Rubin v. Greenberg

**#7.00**    Pretrial conference re: complaint to determine dischargeability  
of debt pursuant to sections 523(a)(15)

fr. 8/23/17; 10/25/17; 4/4/18;5/13/18; 6/13/18

Docket      1

**\*\*\* VACATED \*\*\*    REASON: Order entered 11/7/18 continuing hearng to  
3/20/19 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

- #8.00** Status conference re: complaint for:
1. Denial of debtor's discharge [11 U.S.C. § 727]
  2. Determination that debt is non-dischargeable  
[11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]
- fr. 2/7/18; 10/17/18(stip)

Docket 1

**Tentative Ruling:**

During the prior status conference, the Court instructed the plaintiff to file a notice of dismissal in the debtor's bankruptcy case no later than November 21, 2018. The plaintiffs did not file their notice of dismissal until November 28, 2018. Consequently, the 14-day notice period will expire on December 12, 2018, the date of this status conference.

To assess if a party in interest substitutes into this action prior to the expiration of the 14-day deadline, the Court will continue this status conference to **1:30 p.m. on December 19, 2018.**

Appearances on December 12, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

**#9.00** Status conference re: complaint of plaintiff  
pursuant to 11 USC § 523(a)(2)

fr. 2/14/18; 5/16/18; 6/20/18, 9/12/18, 11/7/18

**Stipulation filed 11/26/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Judgment entered 11/28/18 re settlement**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#10.00** Pretrial conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18; 10/31/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's instructions from the prior pretrial conference, the parties did not file an amended joint pretrial stipulation curing the deficiencies from their prior joint pretrial stipulation. In addition, the plaintiff did not submit a scheduling order or file a unilateral pretrial statement explaining why the parties did not timely file an amended joint pretrial stipulation.

The Court intends to issue an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute.

**10/31/2018 Tentative:**

The untimely joint pretrial stipulation (the "JPS") filed by the parties on October 26, 2018 does not comply with Local Bankruptcy Rule ("LBR") 7016-1(b)(2), as specified below.

Contrary to LBR 7016-1(b)(2)(C), the parties do not clearly set forth the issues of law to be litigated at trial. The plaintiff's complaint asserts a claim under 11 U.S.C. § 523(a)(6), and the language in the JPS appears to reassert that claim.

In paragraph 41 of the JPS, the parties indicate that the plaintiff intends to request denial of the defendant's discharge under 11 U.S.C. § 727(a)(3). However, the plaintiff has not moved to file an amended complaint. Moreover, because the defendant has already received his discharge, the plaintiff is limited to requesting *revocation* of the defendant's discharge under one of the grounds set forth in 11 U.S.C. § 727(d); any claim for denial of the defendant's discharge under 11 U.S.C. § 727(a) is time barred.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

In addition, the parties' exhibit list does not comply with LBR 7016-1(b)(2)(D). The parties do not specify which party is offering which exhibit. Moreover, the parties do not provide an adequate description of each exhibit, which must include information sufficient for identification. For example, the parties do not provide sufficient information for exhibit nos. 24-26 and 28. Have the parties exchanged exhibits they intend to offer at trial?

Contrary to LBR 7016-1(b)(2)(E), the parties have not specified which witness is being offered by which party. The parties also do not provide a summary of the proposed testimony by each witness.

The parties list certain doctors in their witness list; do the parties intend to call any of these doctors as expert witnesses? If so, have the parties exchanged narrative statements of the qualifications of the experts? Have the parties exchanged expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2)?

In the paragraph listing their witnesses, the parties state that their witnesses "include, but are not limited to" the listed witnesses. The parties must provide a *complete* list of witnesses. Any witness not listed in the parties' witness list will not be permitted to testify at trial.

Concurrently with submitting their amended joint pretrial stipulation, the parties also must submit a joint witness schedule indicating on which day of trial, and at which time, each witness will testify and estimating the duration of each witness's testimony.

Contrary to LBR 7016-1(b)(2)(F), the parties have not specified if there are any other matters that may affect trial, such as anticipated motions in limine, motions to withdraw reference or other pretrial motions. Moreover, contrary to LBR 7016-1(b)(2)(G), the parties have not indicated if discovery is complete and, contrary to LBR 7016-1(b)(2)(H), the parties have not indicated if they are ready for trial.

Contrary to LBR 7016-1(b)(2)(I), the parties have not provided an estimate of the length of trial. The parties also do not include the language from LBR 7016-1(b)(2)(J) in the JPS.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Adir Setton**

**Chapter 7**

Finally, the parties have not updated the Court regarding the Court-ordered mediation the parties were required to attend by August 31, 2018 [doc. 19]. Did the parties attend mediation? The parties must be prepared to discuss these issues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

Adv#: 1:18-01057 Acevedo v. Romero II

**#11.00** Status conference re: Amended complaint for nondischargeability  
11 U.S.C. 523a (2) debt obtained through fraud, embezzlement  
and false pretenses

fr. 09/12/18; 10/31/18

Docket 14

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/15/19.

Deadline to file pretrial motions: 4/1/19.

Deadline to complete and submit pretrial stipulation in accordance with Local  
Bankruptcy Rule 7016-1: 4/24/19.

Pretrial: 1:30 p.m. on 5/8/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after  
this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions  
against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Alberto Romero II

Pro Se

**Defendant(s):**

Jorge Alberto Romero II

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

**Plaintiff(s):**

Carlos Acevedo

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11488 Christopher Anderson**

**Chapter 7**

Adv#: 1:18-01105 QUEEN et al v. Anderson

**#12.00** Order to show cause why defendant's answer  
should not be stricken for failure to prosecute

Docket 0

**Tentative Ruling:**

On November 7, 2018, the Court held a status conference. The defendant did not appear. In addition, the defendant did not meet and confer with the plaintiffs in accordance with Local Bankruptcy Rule ("LBR") 7026-1 and did not participate in the filing of a joint status report in accordance with LBR 7016-1(a).

As a result, on November 8, 2018, the Court issued the *Order to Show Cause Why Defendant's Answer Should Not be Stricken for Failure to Prosecute* (the "OSC") [doc. 9]. In the OSC, the Court instructed the defendant to file a response to the OSC no later than November 28, 2018.

The defendant did not timely file a response to the OSC and did not otherwise file any updates in preparation for the continued status conference. Consequently, the Court will strike the defendant's answer [doc. 6], and the plaintiff may proceed by way of default judgment.

The Court will prepare the order striking the defendant's answer.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Defendant(s):**

Christopher Anderson

Represented By  
Daniel King

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Christopher Anderson**

**Chapter 7**

**Plaintiff(s):**

WAYNE QUEEN

Represented By  
Michael Goch

TONY WAYNE BLASSINGAME

Represented By  
Michael Goch

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11488 Christopher Anderson**

**Chapter 7**

Adv#: 1:18-01105 QUEEN et al v. Anderson

**#13.00** Status conference re: complaint 1) objecting to discharge [11 USC sections 727(a)(2)(A), (a)(3), (a)(4), (a)(5) and (a)(6)]; 2) to determine non-dischargeability of debt [11 USC sections 523(a)(2)(A) and (a)(6)]

fr. 11/7/18

Docket 1

**Tentative Ruling:**

In light of the fact that the Court will strike the defendant's answer, the plaintiffs may proceed to entry of default and default judgment.

To obtain entry of default, the plaintiffs must submit Local Bankruptcy Rule Form F 7055-1.1.Req.Enter.Default, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If the plaintiffs will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiffs must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **February 1, 2019**.

If the plaintiffs will be seeking to recover attorneys' fees, the plaintiffs must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Christopher Anderson**

**Chapter 7**

**Defendant(s):**

Christopher Anderson

Pro Se

**Plaintiff(s):**

WAYNE QUEEN

Represented By  
Michael Goch

TONY WAYNE BLASSINGAME

Represented By  
Michael Goch

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room      301**

1:30 PM

**1:18-10329    Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045      Dargah v. Dargah et al

**#13.10**      Status conference re: first amended Complaint for:

- 1) Fraud
- 2) Faud based on forgery;
- 3) Civil conspiracy;
- 4) Misconduct of neglect of notary public;
- 5) Quit title;
- 6) Cancellation of instrument;
- 7) Slander of title;
- 8) Declaratory relief;
- 9) Injunctive relief

fr. 10/17/18; 12/5/18

CROSS COMPLAINT

Jeff Daragah, an individual  
Cross-Complainant

v

Ali P. Dargah, an individual  
Cross-Defendant

Docket      10

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 4/1/19.

Deadline to file pretrial motions: 4/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ali P Dargah**

**Chapter 13**

Bankruptcy Rule 7016-1: 4/24/19.

Pretrial: 1:30 p.m. on 5/8/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik

**Defendant(s):**

Jeff Javad Dargah	Pro Se
Jeff Javad Dargah, an individual	Pro Se
Gerakdune Granda an individual	Pro Se
The Bank of New York Mellon fka	Pro Se
Shahla Dowlati, an individual	Pro Se
All Persons or Entities Unknown	Pro Se
Does 1 to 10, Inclusive	Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik  
David M Kritzer

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10468 Patrick Abrahamian**

**Chapter 7**

Adv#: 1:18-01063 Cotton v. Abrahamian

**#13.20** Status conference re complaint to determine the  
non-dischargeability of debts under 11U.S.C. §523(a)(6)

fr. 7/18/18; 10/3/18; 12/5/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 12/7/18.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patrick Abrahamian

Represented By  
Leo Fasen

**Defendant(s):**

Patrick Abrahamian

Pro Se

**Plaintiff(s):**

Thomas Christian Cotton

Represented By  
Andrew R Delaflor

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11243 Jeff Davani**

**Chapter 7**

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

**#13.30** Status conference re: first amended complaint objecting to discharge of debt under 11 U.S.C. sec 523(a)(2), (a)(4), and (a)(6)

fr. 12/5/18

Docket 8

**\*\*\* VACATED \*\*\* REASON: Order entered continuing hearing to 1/9/19  
at 1:30 p.m. - jc**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeff Davani

Pro Se

**Defendant(s):**

Jeff Davani an individual, doing

Represented By  
Michael H Raichelson

**Joint Debtor(s):**

Nadia Davani

Pro Se

**Plaintiff(s):**

Yvonne Johnson

Represented By  
Stephen M Sanders

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:16-10045 Duane Daniel Martin**

**Chapter 7**

Adv#: 1:18-01106 David K. Gottlieb in his capacity as Chapter 7 Tru v. Roxe, LLC, a

- #13.40** Status conference re: complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
  2. Recover property of the estate nature of suit

fr. 11/7/18(stip); 12/5/18

**Stipulation to continue filed 12/10/18**

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on January 9, 2019**, to be held in connection with the hearing regarding defendants' motion to dismiss [doc. 15].

Appearances on December 12, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Defendant(s):**

Roxe, LLC, a California limited	Pro Se
Derek Folk, an individual	Pro Se
Michael Martin an individual	Pro Se
Doe 1 through DOE 10, inclusive	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Duane Daniel Martin**

**Chapter 7**

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Plaintiff(s):**

David K. Gottlieb in his capacity as

Represented By  
Beth Ann R Young

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#13.50** Status conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 3/7/18; 8/8/18; 8/22/18; 10/17/18; 12/5/18

Docket 1

**Tentative Ruling:**

In connection with the pending motion for default judgment, the Court will continue this status conference to **1:30 p.m. on February 6, 2019.**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#14.00** Motion to Extend Time to Assume or Reject Unexpired  
Executory Contract for Real Property Lease

Docket 56

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By  
M. Jonathan Hayes  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#14.10** Motion for sanctions against plaintiff Steven Mark Rosenberg pursuant to FRCP Rule 11 and FRBP Rule 9011; in the form of monetary sanctions in the striking of the notice of motion and motion to alter or amend judgment

fr. 12/5/18

Docket 61

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On June 30, 2017, Steven Mark Rosenberg ("Plaintiff") filed a voluntary chapter 7 petition. On November 27, 2017, Plaintiff filed a complaint against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, Inc. ("Ocwen"), Alliance Bancorp, Inc., Alliance Bancorp Estate Trustee Charles A. Stanziale, Jr., MERS Mortgage Electronic Registration Systems, Inc. ("MERS"), One West Bank and CIT Bank, N.A. The complaint alleges claims asserting a violation of 11 U.S.C. § 524(a), violation of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(B) and (C), fraudulent concealment, violation of 18 U.S.C. § 157 and requesting declaratory relief. At all times during the course of this adversary proceeding, Plaintiff has represented himself.

On January 23, 2018, Plaintiff voluntarily dismissed CIT Bank, N.A. and Alliance Bancorp, Inc. as defendants, leaving Deutsche Bank, MERS and OCwen (collectively, "Defendants") [doc. 13]. On February 13, 2018, Ocwen and MERS filed a motion for judgment on the pleadings (the "Motion for Judgment") [doc. 16]. In the Motion for Judgment, Ocwen and MERS argued that: (A) any forgery, cancellation or rescission claims are time barred; (B) Plaintiff's claim for violation of § 524(a)(2) failed because a discharge does not void a creditors' *in rem* rights; (C) Plaintiff's claim for violation of FRBP 3001(c)(2)(B) failed because a creditor's right to foreclose passes through a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room      301**

2:30 PM

**CONT...      Steven Mark Rosenberg**

**Chapter 7**

bankruptcy case; (D) Plaintiff's fraud claims are time barred; and (E) Plaintiff lacks standing to pursue the fraud claims.

On March 9, 2018, Deutsche Bank filed a joinder in the Motion for Judgment and the RJN [doc. 24]. On March 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition to Judgment") [doc. 30]. In the Opposition to Judgment, Plaintiff argued that: (A) his claims are not time barred because the adversary proceeding was a continuation of a previously filed probate action; (B) equitable tolling applies to allow Plaintiff to proceed with his claims; (C) that Plaintiff has standing because Plaintiff "is an affected party;" and (D) that Plaintiff has otherwise stated claims for relief against Defendants.

On May 2, 2018, the Court held a hearing on the Motion for Judgment. Plaintiff and Defendants appeared at the hearing as noted on the record and presented oral argument. In advance of the hearing, the Court prepared a tentative ruling granting the Motion for Judgment, which the Court subsequently adopted as its final ruling (the "Ruling") [doc. 41]. In the Ruling, the Court held: (A) Plaintiff's claims are time barred and equitable tolling does not apply; (B) Defendants did not violate 11 U.S.C. § 524(a); (C) that FRBP 3001(c)(2) does not give rise to a cause of action, and that, in any event, liens survive bankruptcy whether or not a creditor files a proof of claim; (D) that Plaintiff lacks standing to pursue his fraudulent concealment claims regarding Defendants' assignments because California law provided only for *post*-foreclosure standing, and Plaintiff had not asserted any *pre*-foreclosure damages; (E) that this Court did not have jurisdiction to prosecute Defendants for bankruptcy fraud; and (F) that there was no basis for declaratory relief.

On May 14, 2018, the Court entered the *Judgment Following Defendants' Motion for Judgment on the Pleadings* [doc. 50]. On June 7, 2018, the Court entered an *Amended Judgment Following Defendants' Motion for Judgment on the Pleadings* (the "Judgment") [doc. 56].

On June 11, 2018, Plaintiff filed a motion to alter or amend the Judgment (the "Motion to Alter") [doc. 58], seeking reconsideration of the Judgment. In the Motion to Alter, Plaintiff stated that he sought relief from the Judgment pursuant to Federal Rule of Civil Procedure ("Rule") 59(e), as applied to bankruptcy cases by FRBP 9023. In the Motion to Alter, Plaintiff once again asserted that equitable tolling applies to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

this proceeding and that Plaintiff has standing to challenge assignments. This time, Plaintiff added the argument that Plaintiff has standing under Rule 17 because Plaintiff filed the adversary proceeding in his capacity as an administrator of his father's probate estate. In accordance with this Court's self-scheduling procedures, which prohibits self-scheduling of motions for reconsideration, Plaintiff did not set the Motion to Alter for hearing. In addition, Defendants did not file an opposition to the Motion.

Instead, on September 7, 2018, Deutsche Bank filed a motion to sanction Plaintiff under FRBP 9011 (the "Motion") [doc. 61]. In the Motion, Deutsche Bank requested non-monetary sanctions in the form of striking the Motion to Alter and monetary sanctions in the amount of \$6,350 incurred filing the Motion. On September 14, 2018, Ocwen and MERS filed a joinder to the Motion [doc. 68], requesting non-monetary sanctions in the form of striking the Motion to Alter. On November 20, 2018, Plaintiff filed two responses to the Motion (collectively, the "Response") [docs. 72, 73], arguing that he filed the Motion to Alter because he believed the Court committed a clear error of law and requesting leniency as a *pro se* party. On November 21, 2018, the Court entered an order denying the Motion to Alter [doc. 74].

## **II. ANALYSIS**

Pursuant to FRBP 9011(b)—

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Pursuant to FRBP 9011(c)—

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

- (1) How initiated

- (A) By Motion

A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

- (2) Nature of sanction; limitations

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Mark Rosenberg**

**Chapter 7**

effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

"An award of sanctions for a violation of FRBP 9011 or its counterpart in the FRCP, Rule 11, is an exceptionally serious matter, and is reserved for those rare situations in which a claim or defense is asserted without any evidentiary support or legal basis, or for improper purposes, such as to harass or delay an opponent, or cause undue expense." *In re Quinones*, 543 B.R. 638, 646 (Bankr. N.D. Cal. 2015). "We accord the district court's determination whether to impose sanctions deference, because 'the district court is better situated than the court of appeals to marshal the pertinent facts and apply [the law].'" *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 291 (9th Cir. 1995) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402-03 (1990)).

The Motion is based on two grounds: first, that Plaintiff did not set the Motion to Alter for hearing and, second, that Plaintiff's arguments in the Motion to Alter are meritless and that Plaintiff did not have an applicable basis under Rule 59(e) to move to alter or amend the Judgment. Regarding the first basis, the Court's self-calendaring procedures, located on the Court's website, explicitly state that parties may not self-calendar calendar motions for reconsideration. In this case, the Court declined to set the Motion to Alter for hearing and elected to rule on the Motion to Alter without hearing. As such, the Court deciding not to set the Motion to Alter for hearing is not a basis to sanction Plaintiff.

As to the second basis, Defendants assert that Plaintiff's arguments in the Motion to Alter were meritless because Defendant did not have grounds to move for relief under Rule 59(e). To obtain relief under Rule 59(e), the moving party must show that the court "(1) is presented with newly discovered evidence, (2) committed clear error or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (internal citation omitted).

The Court also will not sanction Plaintiff on this basis. Here, Plaintiff did not argue that there was new evidence or an intervening change in law. Rather, Plaintiff believed the Court committed clear error and that the Judgment will result in manifest injustice. To this end, although Plaintiff repeated many of the arguments he made in the Opposition to Judgment in the Motion to Alter, Plaintiff did present new arguments regarding standing, i.e., that Plaintiff has standing under Rule 17 as an administrator of his father's estate. Plaintiff could have presented these arguments in the Opposition to Judgment. Nevertheless, given that Plaintiff is *pro se* and this is the first motion to reconsideration filed by Plaintiff in this adversary proceeding and Plaintiff's bankruptcy case, Plaintiff may have believed he could present the argument in a motion under Rule 59(e). Further, given that the Court had not previously addressed whether Plaintiff would have standing as an administrator of his father's estate, Plaintiff's arguments under Rule 17 are not so frivolous as to trigger a violation of FRBP 9011(b).

Moreover, sanctions are not warranted under FRBP 9011(c)(2), which states that "[a] sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Because the Court has already entered judgment in this adversary proceeding and ruled on the Motion to Alter, and because this is Plaintiff's first request for reconsideration, the Court does not find that sanctions are required as a deterrent at this time.

In addition, Defendants did not incur any attorneys' fees or costs responding to the Motion to Alter because Defendants did not oppose that motion. Deutsche Bank was not required to file this Motion, as this Motion was not responsive to the Motion to Alter. In addition, the Court elected to rule on the Motion to Alter without setting the Motion to Alter for hearing. As such, Defendants also did not incur fees or costs appearing at a hearing on the Motion to Alter. Consequently, the Court does not need to impose monetary sanctions to reimburse Defendants for any fees or costs incurred responding to the Motion to Alter. Moreover, Defendants' request for non-monetary sanctions is moot; the Court entered an order on the Motion to Alter rather than



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Steven Mark Rosenberg**  
striking the pleading.

**Chapter 7**

The Court notes that, although some leniency is afforded to *pro se* litigants, *pro se* parties are not immune from sanctions as Plaintiff contends in the Response. *See* Rule 11 Advisory Comm. Notes ("Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations."); *see also In re Marsch*, 36 F.3d 825, 829 (9<sup>th</sup> Cir. 1994) ("Because FRCP 11 and Bankruptcy Rule 9011 use virtually identical language, we often rely on cases interpreting the former when construing the latter."). The Court will take into account Plaintiff's *pro se* status, but Plaintiff cannot use his *pro se* status as a shield should Plaintiff make repetitive or frivolous arguments in the future.

At this time, because Plaintiff is *pro se*, the Motion to Alter is Plaintiff's first motion under Rule 59(e) in this adversary proceeding, Defendants did not incur any fees or costs responding to the Motion to Alter or appearing at a hearing on the Motion to Alter and the Court already ruled on the Motion to Alter, the Court will not impose sanctions against Plaintiff.

**III. CONCLUSION**

The Court will deny the Motion.

The Court will prepare the order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Tomas A Ortiz

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Steven Mark Rosenberg**  
Ocwen Loan Servicing, Inc

**Chapter 7**

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#14.20** Plaintiff's motion for default judgment

fr. 12/5/18

Docket 60

**Tentative Ruling:**

Continue for the plaintiff to offer supplemental evidence in support of its claims.

**I. BACKGROUND**

On September 12, 2017, Robin DiMaggio ("Defendant") filed a voluntary chapter 7 petition. In his schedule E/F [doc. 9], Defendant listed a debt in the amount of \$20,000 in favor of Forum Entertainment Group, Inc. ("Plaintiff") based on breach of contract. In his schedule H, Defendant listed DiMaggio International, Inc. ("DMI") as a codebtor.

In his schedule I, Defendant indicated that he is unemployed and listed \$0 in monthly income. In his Statement of Financial Affairs ("SOFA"), Defendant indicated that he received \$0 in income in 2017. Defendant also indicated that he received \$20,636 in income in 2016 and \$12,312 in income in 2015.

On December 19, 2017, Plaintiff filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6) and objecting to Defendant's discharge under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5). In relevant part, the Complaint alleged:

In early February 2012, Plaintiff decided to organize a for-profit music concert and feature a lineup of South Korean and American music artists (the "Concert"). To organize the Concert, Plaintiff's Chief Executive Officer, Calvin Lau, approached his friend, Steve Yu. Around April 2012, Mr. Yu introduced Plaintiff to Defendant, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

principal of DMI. DMI is an alter ego of Defendant.

Defendant represented to Plaintiff that he had all of the entertainment industry contacts necessary to secure talent and produce the Concert; Defendant also represented to Plaintiff that he could personally secure the performances of Will.I.Am and Pitbull. On top of these oral representations, Defendant included these misrepresentations on his website. In May 2012, Defendant presented Plaintiff with a budget sheet that unequivocally stated his ability to secure the musical performances of Will.I.Am and Pitbull, among other discounted rates for production of the Concert.

After receiving the budget sheet and relying on Defendant's representations, Plaintiff entered into an oral agreement to retain DMI's services to secure various performances, including Will.I.Am, Pitbull, The Michael Jackson Band, Don Felder and Miri Ben Ari for the Concert. Throughout the summer of 2012, Defendant provided assurances via emails, in addition to oral confirmations, which Plaintiff relied on to its detriment.

Based on the representations, on May 5, 2012, Plaintiff gave Defendant \$50,000, to be paid to DMI, to secure Will.I.Am as a performer. In addition, on May 8, 2012, Plaintiff gave Defendant another \$50,000, to be paid to DMI, to secure Pitbull as a performer. In June 2012, Plaintiff followed up with Defendant to determine the status of securing the performances. Defendant represented to Plaintiff that he had given the \$100,000 to the artists and was waiting for confirmation.

Defendant then requested additional funds to secure the performance of The Michael Jackson Band. On June 11, 2012, Plaintiff gave DMI a cashier's check in the amount of \$18,000 to be used as a security deposit to secure The Michael Jackson Band for the Concert. On June 29, 2012, relying on Defendant's representation that Will.I.Am and Pitbull had been paid and would be confirmed, Plaintiff made a down payment in the amount of \$15,000 to The Greek Theater to secure a location for the Concert.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

On July 2, 2012, Defendant requested that Plaintiff provide an additional \$13,000 to secure sound engineers for the Concert. Again, Plaintiff inquired about the status of Will.I.Am and Pitbull, and Defendant informed Plaintiff that the deposits had been paid and that confirmations were on their way. Relying on Defendant's representation, Plaintiff gave DMI an additional \$13,000 to be paid to sound engineers. On July 17, 2012, Defendant represented to Plaintiff that DMI needed an advance on its brokering fees for the Concert. Plaintiff again questioned Defendant about Will.I.Am and Pitbull, and Defendant again represented confirmations were on the way; as such, Plaintiff gave DMI \$15,000.

From July 18, 2012 to July 29, 2012, Plaintiff repeatedly tried to contact Defendant regarding the status of confirmations regarding Will.I.Am and Pitbull. However, Defendant became non-responsive and refused to communicate with Plaintiff. Defendant did not inform Plaintiff of his failure to secure the performances of Will.I.Am and Pitbull.

When Plaintiff was able to regain contact with Defendant, Plaintiff again requested confirmations that Will.I.Am and Pitbull would perform. At this time, Defendant admitted to Plaintiff that he could not secure the the artists' performances; that he had never paid the respective \$50,000 deposits to Will.I.Am and Pitbull; that Defendant has instead placed the \$100,000 deposit money for Will.I.Am and Pitbull into his own personal bank account; and that Defendant could not return the \$100,000 because his personal account had been frozen due to his pending divorce.

However, Defendant still represented that he could assist with the Concert; Defendant informed Plaintiff that the Concert should move forward with The Michael Jackson Band and others that had been verbally represented to be confirmed to perform. As such, on October 16, 2012, Plaintiff placed a secondary deposit with The Greek Theater in the amount of \$123,890 to lock the venue for the Concert on

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**  
October 27, 2012.

**Chapter 7**

Because Defendant knew he could not return Plaintiff's deposits, Defendant suggested to Plaintiff that Plaintiff also plan a second concert showcasing Don Felder, Miri Ben Ari, The Michael Jackson Band and others. Defendant agreed to assist Plaintiff in securing artist performances for the second concert. As such, in October 2012, Plaintiff made additional payments to DMI, including: (A) on October 9, 2012, a \$5,000 cashier's check for DMI to secure Don Felder; (B) on October 10, 2012, a \$7,500 cashier's check for DMI to secure Miri Ben Ari; and (C) on October 15, 2012, a \$5,000 cashier's check for a brokering service fee advance to DMI.

Knowing that Plaintiff was desperate to push forward with the Concert, Defendant convinced Plaintiff to pay Defendant \$7,000 for DMI to use to promote the Concert on a radio station. Based on Defendant's representations, in October 2012, Plaintiff also expended an additional \$60,000 on marketing, artist performance fees and costs related to travel, lodging and management of Korean artists slated to perform.

On October 25, 2012, two days before the Concert, Plaintiff realized the Concert could not go forward and, having no other choice, canceled the Concert. None of the performances for which Plaintiff paid DMI took place. From October 2012 until the present, Plaintiff has repeatedly asked Defendant to return the monies paid for artist deposits and/or brokering fees. Defendant has not returned any of the funds to Plaintiff. From April 2012 to October 2012, Plaintiff spent a total of \$661,000 to put on the Concert, and suffered damages in excess of \$2 million based on the Concert being canceled.

In addition, after filing his chapter 7 petition, Defendant failed to list certain assets in his petition. For instance, in his schedule F, Defendant listed that the debt he owed Plaintiff was only \$20,000. In addition, in his SOFA, Defendant did not list any income received from DMI in the last three years. Even if Defendant does not consider the funds converted from Plaintiff as "income," Defendant did not include the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

money in his SOFA as property he is holding for another entity.

Complaint, pp. 2-8. Below its 11 U.S.C. § 523(a)(6) claim, where Plaintiff alleged that Defendant converted Plaintiff's funds with willful and malicious intent, Plaintiff alleges:

Defendant engaged in willful and malicious conduct as well as in the conversion of Plaintiff's assets. Between May 2012 and October 2012, Defendant, while acting as an agent and fiduciary to Plaintiff, made certain representations to Plaintiff about his ability to secure certain musical talent for the Concert which Defendant knew Plaintiff would rely on and would secure him monetary payments. Defendant provided budget sheets, told Plaintiff payments would be paid to musical talents, sound engineers and for brokering fees, when in reality Defendant knew the information to be false and knew his intentional conduct would cause injury to Plaintiff.

During these months, Plaintiff incurred at least \$660,000 in direct damages from Defendant's willful and malicious acts and representations. Defendant took the funds for his own personal gain without disclosure when they were earmarked for third parties. As a direct and proximate result of the above, Plaintiff suffered damages in an amount in excess of \$2 million. Defendant acted willfully, maliciously and with deliberate intent to deceive Plaintiff.

Complaint, p. 11. Plaintiff also attached several emails between Defendant and Plaintiff's representatives to the Complaint, which emails have not been authenticated by a party with personal knowledge.

On August 22, 2018, the Court held a pretrial conference. Defendant did not appear. As a result, on August 28, 2018, the Court entered an Order to Show Cause why Defendant's answer should not be stricken based on his failure to appear (the "OSC") [doc. 49]. On October 17, 2018, Defendant appeared at the hearing on the OSC. At that time, Defendant agreed to the striking of his answer and entry of default against him. Consequently, the Court instructed Plaintiff to file a motion for default judgment to prove up its claims against Defendant.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

On October 31, 2018, Plaintiff filed the Motion [doc. 60]. To the Motion, Plaintiff attached the Declaration of Sanaz Sarah Berliani (the "Bereliani Declaration"). In the Bereliani Declaration, Ms. Bereliani repeats the allegations in the Complaint as to Plaintiff's claims under 11 U.S.C. § 523. Bereliani Declaration, ¶¶ 4-36.

As to its claims under § 727(a)(2) and (a)(4), Plaintiff asserts that Defendant's discharge should be denied because: (A) Defendant understated the amount of debt owed to Plaintiff by listing a debt for \$20,000 in his schedule E/F; (B) Defendant did not include the misappropriated funds in his schedules or statements; (C) Defendant did not list \$24,000-\$32,000 in yearly income from the Canadian association "SESAC" in his schedules or statements; and (D) Defendant did not schedule his ex-wife as a co-debtor in his schedule H. As to its claim under § 727(a)(3), Plaintiff asserts that Defendant's failure to produce discovery to Plaintiff should bar Defendant from obtaining a discharge. Finally, as to its claim under § 727(a)(5), Plaintiff contends that Defendant has failed to account for the funds Plaintiff furnished to Defendant.

## **II. ANALYSIS**

Federal Rule of Civil Procedure ("FRCP") 55, incorporated by Federal Rule of Bankruptcy Procedure 7055, governs default judgments. FRCP 55(b)(2) provides as follows:

(b) Judgment. Judgment by default may be entered as follows...

...(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

"Our starting point is the general rule that default judgments are ordinarily disfavored." *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). But, "[c]ourts have inherent equitable powers to dismiss actions or enter default judgments for failure to prosecute, contempt of court, or abusive litigation practices." *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987). "The bankruptcy court has broad discretion to grant a default judgment; the plaintiff is not entitled to such judgment as a matter of right." *In re McGee*, 359 B.R. 764, 771 (B.A.P. 9th Cir. 2006). "The trial court's 'broad discretion' over entry of default judgment includes the discretion to require the plaintiff to prove its case with competent, admissible evidence, to assess matters in accordance with substantial justice, and to make reasonable inferences against the plaintiff." *Id.*, at 775.

"[A] default establishes the *well-pleaded* allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." Facts that are *not* well pled include allegations that are "made indefinite or erroneous by other allegations in the same complaint, . . . allegations which are contrary to the facts of which the court will take judicial notice, or which are not susceptible to proof by legitimate evidence, or which are contrary to the uncontroverted material in the file of the case." It follows that a default judgment that is based solely on the pleadings may only be granted upon well-pled factual allegations, and only for relief for which a sufficient basis is asserted in a complaint.

*Id.*, at 772. Further, even if the Court takes the plaintiff's facts as true, "the facts alleged in the complaint may be insufficient to establish liability." *Id.*, at 771.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *McGee*, at 771 (*Eitel v. McCool*, 782 F.2d at 1471-72); *see also Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173 (N.D. Cal. 2007). However, "Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." *Televideo Systems*, 826 F.2d at 917.

**A. Possibility of Prejudice to the Plaintiff**

Here, given Defendant's lack of cooperation and the Court's striking of Defendant's answer, a default judgment is likely the only avenue to judgment left for Plaintiff. As such, if Plaintiff does not obtain a default judgment, Plaintiff will suffer prejudice.

**B. Merits of the Plaintiffs' Substantive Claims**

Plaintiff requests default judgment as to seven claims: nondischargeability of its debt under 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6) and objection to discharge under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5).

**1. 11 U.S.C. § 523(a)(2)(A)**

To prevail on a § 523(a)(2)(A) claim, a plaintiff must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

(5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

The only evidence in support of Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) is the Bereliani Declaration. As Ms. Bereliani does not have personal knowledge of the events that transpired between Plaintiff and Defendant, the Bereliani Declaration cannot be used to prove up Plaintiff's claim under § 523(a)(2)(A). In addition, although Plaintiff may rely on the allegations in the Complaint to prove intent, Plaintiff does not allege that Defendant acted with knowledge of the falsity of his statements or with intent to deceive at the time he incurred the debt. Plaintiff does allege that Defendant "acted... with deliberate intent to deceive Plaintiff" under Plaintiff's § 523(a)(6) claim, but does not specify if Defendant acted with intent to deceive at the time Defendant made the alleged misrepresentations to Plaintiff. As such, the allegations do not establish intent for purposes of § 523(a)(2)(A).

As to intent, even if Plaintiff offers a declaration by a percipient witness, that witness likely cannot testify as to Defendant's intent. As such, to obtain relief under § 523(a)(2)(A), Plaintiff would have to move to file an amended complaint.

Finally, the Complaint does not include sufficient allegations regarding whether Defendant's actions caused cancellation of the Concert. The Complaint includes allegations that other artists were set to perform (such as The Michael Jackson Band and unnamed Korean artists), and Don Felder and Miri Ben Ari were allegedly set to perform for a *second* concert. As such, it is not clear why the Concert did not go forward with the other performers. Under FRCP 9(b), which requires specific allegations related to fraud, the allegations are insufficient to establish causation. Consequently, Plaintiff has not proven up its claim under § 523(a)(2)(A).

**2. 11 U.S.C. § 523(a)(4)**

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

*i. Fraud or Defalcation While Acting in a Fiduciary Capacity*

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); see also *In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796. Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 fn. 6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at fn. 7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

Here, Plaintiff has not alleged that an express, statutory or technical trust existed prior to the events alleged in the Complaint. In *In re Kelley*, 2008 WL 8013409, at \*7 (Bankr. S.D. Cal. Jul. 15, 2008), on which Plaintiff relies, the court found that a fiduciary relationship existed between the debtor (a real estate broker) and the creditor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

(a client) by operation of California Business & Professions Code § 10145, which creates a statutory trust when clients deposit funds with real estate brokers. Plaintiff has not established that such a statutory trust exists in this case.

**ii. Embezzlement**

"Federal law and not state law controls the definition of embezzlement for purposes of section 523(a)(4)." *In re Wada*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997).

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been [e]ntrusted or into whose hands it has lawfully come.'" *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S.Ct. 294, 295, 40 L.Ed. 422 (1895)).

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of a nonowner, (2) the nonowner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). For purposes of embezzlement, a fiduciary relationship is not required. *Id.*, at 555.

Once again, the only evidence in support of Plaintiff's § 523(a)(4) claim is the Bereliani Declaration, and Ms. Bereliani does not have personal knowledge of the events that form the basis of Plaintiff's § 523(a)(4) claim. In addition, although the Complaint includes allegations that Defendant misappropriated the \$100,000 given to Defendant for the purpose of securing Will.I.Am and Pitbull (and incurred certain damages as a result of the misappropriation), the Complaint does not include allegations regarding what Defendant did with the funds that were earmarked to secure Don Felder and Miri Ben Ari as performers. For example, Plaintiff does not allege that Defendant did not use the funds to attempt to secure these performers. As such, the Complaint does not establish misappropriation as to the \$17,500 Plaintiff gave to Defendant to secure Don Felder and Miri Ben Ari. A future supplemental declaration by an appropriate witness should include such information.

With respect to "circumstances indicating fraud," because the Complaint does not include intent allegations under § 523(a)(2)(A), Plaintiff has not established fraud itself. However, Plaintiff need not show actual fraud to show "circumstances indicating fraud." In a relatively recent unpublished decision, the BAP, relying on the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Supreme Court of the United States' decision in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016), found that "circumstances indicating fraud" for purposes of embezzlement is "not synonymous" with an "intent to defraud" as required by § 523(a)(2)(A):

Debtor primarily asserts error because the state court did not make an explicit finding of fraud. We acknowledge this point but find it inapposite. The finding required for a determination of § 523(a)(4) embezzlement is that Debtor's actions indicated fraud. Such a determination is not synonymous with an intent to defraud as required under § 523(a)(2)(A). And even if it were, § 523(a)(2)(A) does not necessarily require a misrepresentation as Debtor argues. Recently in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016), the United States Supreme Court clarified that misrepresentation is not an element of actual fraud under § 523(a)(2)(A). That is, actual fraud may include a wider array of misconduct. The record here sufficiently establishes misconduct that falls within the broader definition of actual fraud and even more plainly meets the § 523(a)(4) requirement of indicia of fraud.

*In re Phillips*, 2016 WL 7383964, at \*5 (B.A.P. 9th Cir. Dec. 16, 2016).

Other courts appear to agree that, unlike § 523(a)(2)(A), the intent to defraud need not be present at the time of the misrepresentation or for the purpose of inducing the creditor to furnish funds. For instance, several courts have held that a debtor's subsequent concealment of misappropriated funds satisfies the "circumstances indicating fraud" element of embezzlement. *See In re Hatch*, 465 B.R. 479, 487 (Bankr. W.D. Mich. 2012) ("Because embezzlement, by definition, involves a situation in which the debtor initially has lawful possession of the property at issue, it is not necessary for a creditor to prove that a debtor's misrepresentations induced it to part with property. Rather, the creditor needs only to prove misappropriation and 'circumstances indicating fraud,' such as circumstances suggesting that the debtor intended to conceal the misappropriation.").

Here, Plaintiff does allege in the Complaint that Defendant concealed the misappropriation. In paragraphs 14 through 20, Plaintiff alleges that it repeatedly

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

asked Defendant about whether Will.I.Am and Pitbull had sent confirmations, and Defendant repeatedly represented that the artists had been paid and that Defendant was awaiting final confirmation. Because Plaintiff alleges that Defendant continued to conceal the misappropriation, the Complaint includes sufficient allegations as to "circumstances indicating fraud." As such, if an appropriate witness provides a declaration substantiating these allegations, Plaintiff will likely be able to show "circumstances indicating fraud."

**3. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Thus, debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, 523 U.S. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("the willful injury requirement of § 523(a)(6) is met when it is shown either that debtor had *subjective* motive to inflict injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct") (emphasis in original).

Under § 523(a)(6), the injury must *also* be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Here, the Complaint does include allegations that Defendant acted "willfully" and "maliciously" in allegedly converting Plaintiff's funds. However, Plaintiff bases its claim under § 523(a)(6) on conversion, and the Complaint does not sufficiently establish conversion.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Under California law, "[t]o maintain a conversion action, '[a plaintiff] must show that she was entitled to immediate possession at the time of conversion.'" *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999) (quoting *Bastanchury v. Times-Mirror Co.*, 68 Cal.App.2d 217, 236 (Ct. App. 1945)). Here, Plaintiff was not entitled to immediate possession of the funds at the time Defendant misappropriated the funds; rather, the funds were to be paid to artists to secure their performances. As such, the Complaint does not establish conversion.

**4. 11 U.S.C. § 727(a)(2)**

Section 727(a)(2)(A)-(B) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor...." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753–54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986) (quoting *Devers*, 759 F.2d at 753–54).

"The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *see also In re Zhang*, 463 B.R. 66, 78 (Bankr. S.D. Ohio 2012).

Plaintiff asserts that Defendant's discharge should be denied based on the following acts of concealment: (A) Defendant understated the amount of debt owed to Plaintiff by listing a debt for \$20,000 in his schedule E/F; (B) Defendant did not include the misappropriated funds in his schedules or statements; (C) Defendant did not list \$24,000-\$32,000 in yearly income from the Canadian association "SESAC" in his schedules or statements; and (D) Defendant did not schedule his ex-wife as a co-



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Robin DiMaggio**  
debtor in his schedule H.

**Chapter 7**

As to Defendant listing a \$20,000 debt owed to Plaintiff as opposed to a larger sum, understating a debt does not constitute concealment of property. This type of inaccuracy in a debtor's schedules is better addressed by 11 U.S.C. § 727(a)(4), discussed below. The same is true regarding scheduling of Defendant's ex-wife as a co-debtor.

Regarding the funds taken from Plaintiff, misappropriated funds would not qualify as property of Defendant or property of the estate, and, as a result, would not come within the purview of § 727(a)(2)(A) or (B). Embezzled money does not qualify as earned income. *See, e.g. In re Wada*, 210 B.R. 572, 576-77 (B.A.P. 9th Cir. 1997).

To the extent Defendant did not disclose income from SESAC in his schedules or statements, such a failure to disclose would qualify as concealment for purposes of § 727(a)(2)(A) and (B). However, Plaintiff has offered no evidence that Defendant in fact received any income from SESAC during the relevant time periods prescribed by § 727(a)(2)(A) and (B). Although the Complaint sufficiently alleges the intent element of these statutes, i.e., that Defendant acted within intent to hinder, delay or defraud, and Plaintiff need not offer further evidence of intent, Plaintiff should supplement the Motion with evidence that Defendant received income from SESAC.

**5. 11 U.S.C. § 727(a)(3)**

Section 727(a)(3) places an affirmative duty on the debtor to keep and preserve records accurately documenting his or her business and personal affairs. *See In re Caneva*, 550 F.3d 755, 762 (9th Cir. 2008). Requiring accurate documentation "removes the risk to creditors of 'the withholding or concealment of assets by the bankrupt under cover of a chaotic or incomplete set of books or records.'" *Id.* (quoting *Burchett v. Myers*, 202 F.2d 920, 926 (9th Cir. 1953)). We strictly construe this exception to discharge in favor of the debtor's fresh start. *Id.*

To succeed on its objection to discharge under § 727(a)(3), Plaintiffs must show "(1) that [Defendant] failed to maintain and preserve adequate records, and (2) that such failure rendered it impossible to ascertain [Defendant's] financial condition and material business transactions." *In re Cox*, 41 F.3d 1294, 1296 (9th Cir. 1994) (quoting *Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3d Cir. 1992)). Generally,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

records are sufficient if they allow the court and creditors to trace the debtor's financial dealings. *In re Ridley*, 115 B.R. 731, 733 (Bankr. D. Mass. 1990).

Here, Plaintiff's claim under § 727(a)(3) is based on Defendant's failure to produce discovery. That Defendant did not cooperate with Plaintiff does not translate to Defendant failed to maintain or preserve those records. In addition, there is no evidence that Defendant "rendered it impossible" to ascertain Defendant's financial condition. Although Defendant may have failed to produce documents to Plaintiff, Plaintiff could have subpoenaed Defendant's banks to gather information about Defendant's financial picture. As such, Plaintiff has not established a claim under 11 U.S.C. § 727(a)(3).

**6. 11 U.S.C. § 727(a)(4)**

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. To bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Retz*, 606 F.3d 1189, 1198 (9th Cir. 2010) (quoting *Khalil*, 379 B.R. at 173). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show that (1) the debtor made the representations;  
(2) that at the time he knew they were false; (3) that he made them with

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

the intention and purpose of deceiving the creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*Roberts*, 331 B.R. at 884. Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 174 (circumstances might include multiple omissions or failure to clear up omissions). "[T]he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011).

As with § 727(a)(2), Plaintiff asserts that Defendant's discharge should be denied based on the following: (A) Defendant understated the amount of debt owed to Plaintiff by listing a debt for \$20,000 in his schedule E/F; (B) Defendant did not include the misappropriated funds in his schedules or statements; (C) Defendant did not list income from the Canadian association "SESAC" in his schedules or statements; and (D) Defendant did not schedule his ex-wife as a co-debtor in his schedule H.

Here, there is no admissible declaration regarding the amount of funds allegedly misappropriated by Defendant. However, if Plaintiff were to supplement the Motion with an admissible declaration by someone with personal knowledge, and if that declaration substantiated the Complaint's allegations regarding the amount of misappropriated funds, that amount would be significantly greater than the \$20,000 debt listed by Defendant in his schedule E/F. As such, upon receipt of an admissible declaration, Plaintiff would be able to show that Defendant made a false oath. In addition, the false oath would be material because it would bear a relationship to Defendant's estate; by understating his liabilities, Defendant did not provide the trustee, the Court and creditors with an accurate picture of his estate.

As to the alleged income from SESAC, once again, Plaintiff has not provided evidence that Defendant received such income, or when Defendant received the alleged income. If Defendant was receiving income from SESAC as of the petition date or within the three years preceding the petition date, then Defendant made a false oath when he stated in his schedules and SOFA that he received no income in 2017.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

In addition, the false oath would be material because it bears a relationship to assets of Defendant's estate.

In the Complaint, Plaintiff alleges that Defendant made false oaths and omissions "knowingly" and "fraudulently." As such, if Plaintiff provides sufficient evidence of the false oaths, Plaintiff may be able to obtain default judgment under § 727(a)(4).

Regarding Plaintiff's allegation that Defendant did not include the funds furnished by Plaintiff as income, as noted above, misappropriated funds do not qualify as "income." In addition, Plaintiff has not explained why the omission of Defendant's ex-wife as a codebtor is a material omission. Consequently, Plaintiff has not established a claim under § 727(a)(4) as to these omissions.

**7. 11 U.S.C. § 727(a)(5)**

Pursuant to 11 U.S.C. § 727(a)(5), a debtor's discharge will be denied if "the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." Under § 727(a)(5), the objecting party must demonstrate that:

(1) debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed or order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets.

*In re Retz*, 606 F.3d 1189, 1205 (9th Cir. 2010).

Here, Plaintiff bases its claim under § 727(a)(5) on the fact that Defendant has not accounted for the funds Plaintiff gave to DMI. However, under § 727(a)(5), courts may deny a debtor's discharge if the debtor has failed to satisfactorily explain a loss of assets. Because Plaintiff is alleging that Defendant embezzled the funds provided by Plaintiff, the embezzled funds would not be "assets" of the bankruptcy estate. As such, Plaintiff has not established a claim under § 727(a)(5).

**C. Sufficiency of the Complaint**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

"The second and third [*Eitel*] factors, taken together, require that [Plaintiffs] assert a claim upon which [they] may recover." *In re Sharma*, 2013 WL 1987351, at \*10 (B.A.P. 9th Cir. May 14, 2013), *aff'd*, 607 F. App'x 713 (9th Cir. 2015), *citing IO Group*, 708 F.Supp.2d 989, 997 (N.D. Cal. 2010). "For default judgment based solely on the complaint, without the benefit of a prove-up hearing, the facts in the complaint must go beyond being well-pled; they must support the ultimate determination of liability." *Sharma*, 2013 WL 1987351 at \*10.

For the reasons stated above, the Complaint did not sufficiently allege claims under 11 U.S.C. § 523(a)(2)(A) or (a)(6), or under 11 U.S.C. § 727(a)(3) or (a)(5). The Complaint does make sufficient allegations as to embezzlement under 11 U.S.C. § 523(a)(4) (but not as to fraud or defalcation while acting in a fiduciary capacity) and as to the omission of certain assets or liabilities under 11 U.S.C. § 727(a)(2) and (a)(4).

**D. The Sum of Money at Stake in the Action**

Under this factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo, Inc. v. Cal. Security Cans*, 238 F.Supp.2d 1172, 1176 (C.D. Cal. 2002). In the Complaint, Plaintiff requests damages in excess of \$2 million.

**E. Possibility of Dispute**

"The fifth *Eitel* factor considers the possibility of dispute as to any material facts in the case." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, \*4 (C.D. Cal. Feb. 13, 2004). "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *TeleVideo Systems*, at 917-918 (quoting *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir.1977)).

Here, Defendant agreed to the striking of his answer and to Plaintiff proceeding by way of default judgment. As such, there is not a significant possibility of dispute.

**F. Possibility of Excusable Neglect**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

"Due process requires that all interested parties be given notice reasonably calculated to apprise them of the pendency of the action and be afforded an opportunity to present their objections before a final judgment is rendered." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, \*5 (C.D. Cal. Feb. 13, 2004) (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950)).

Because this is a situation where Defendant's answer was stricken, and Defendant is aware that default judgment may be entered against him, the general due process concerns are not present here.

**III. CONCLUSION**

The Court will continue this hearing to **1:30 p.m. on February 6, 2019**. No later than **January 23, 2019**, Plaintiff must file a supplemental declaration by a witness with personal knowledge as to Plaintiff's claims under § 523. If the supplemental declaration cures the deficiencies outlined above, the Court may enter default judgment under § 523. As to Plaintiff's claims under § 727(a)(2) and (a)(4), if Plaintiff provides evidence of income received by SESAC within the relevant time periods, and if Plaintiff proves that Defendant misappropriated a sum greater than \$20,000, the Court also may enter default judgment under § 727(a)(2) and (a)(4).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se